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EXAMINER

LANGEL, WAYNE A

ART UNIT PAPER NUMBER

1754

DATE MAILED: 09/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

993737

Applicant(s)

Hgi et al

Examiner

Langel

Group Art Unit

1754

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-35 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 12-20 is/are allowed.
- ☒ Claim(s) 1-11 and 21-35 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 and 3
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 and 21-25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tawil et al. or Stynes et al. or British 1,476,641 or the article by Inoue et al. No distinction is seen between the zirconium phosphate granules disclosed by Tawil et al. or Stynes et al. or British '641 or Inoue et al., and those recited in applicant's claims 1-11 and 21-25. It would be expected that the zirconium phosphate granules formed according to the processes of the references would have the same particle size distribution as recited in applicant's claims, since Tawil et al.

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teach at column 4, lines 64-66 that the product zirconium phosphate is "granular"; the zirconium phosphate of Stynes et al. is prepared by a similar method as that disclosed in applicant's specification (i.e., by the addition of zirconyl chloride solution to orthophosphoric acid); British '641 teaches on page 2, lines 100-112 that the zirconium phosphate particles lie in the 12 to 325 mesh distribution band; and Inoue et al. disclose on page 3528 that the crystalline zirconium phosphate produced has a "large particle size". In any event, it would be prima facie obvious to provide any suitable or optimum particle size distribution for the zirconium phosphate particles produced according to the processes of the references for the intended purpose as an ion exchange material.

Claims 26-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tawil et al. or Stynes et al. or British 1,476,641 or Inoue et al. as applied to claim 6 above, and further in view of Marantz et al. It would be further obvious from Marantz et al. to employ the zirconium phosphate composition produced according to the process of Tawil et al. or Stynes et al. or British '641 or Inoue et al. in a method of providing dialysis and in the form of a particle bed, since Marantz et al. disclose at column 2, lines 52-75 that zirconium phosphate particles are employed in a dialysate system and further disclose at column 2, lines 14-16 that the zirconium phosphate is present

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in column 22, which would be a zirconium phosphate particle bed.

Claims 12-20 are allowed.

Ueda et al., Alberti et al. and Nowell et al. are made of record for disclosing various methods for producing zirconium phosphate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne A. Langel whose telephone number is (703) 308-0248. The examiner can normally be reached on Monday through Friday from 8 A.M. to 3:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on (703) 308-3837. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2351.

WAL:cdc

August 27, 2003

**WAYNE A. LANGEL
PRIMARY EXAMINER**